MOTION FILED
APR 19 1989

(10)

No. 111 Original

In The

Supreme Court of the United States

October Term, 1988

STATE OF DELAWARE, *Plaintiff*

STATE OF TEXAS, *Plaintiff in Intervention*

STATE OF IDAHO, *Plaintiff in Intervention*

v.

STATE OF NEW YORK, *Defendant*

MOTION OF THE STATE OF IDAHO FOR LEAVE TO FILE COMPLAINT IN INTERVENTION; AND COMPLAINT IN INTERVENTION

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MOTION OF THE STATE OF IDAHO FOR LEAVE TO FILE COMPLAINT IN INTERVENTION

Pursuant to Rule 9 of the Rules of the Supreme Court, the State of Idaho, a sovereign state of the United States of America, by and through Attorney General Jim Jones, moves this Court for an order permitting it to intervene as a Party Plaintiff in the above entitled cause. In support of this Motion, the State of Idaho would show the Court as follows:

I.

1. On or about May 31, 1988, this Court granted the Motion of Plaintiff State of Delaware ("Delaware") for leave to file a complaint invoking the original jurisdiction of this Court to resolve a controversy between Delaware and Defendant State of New York ("New York") as to

which state is entitled to claim and take possession of certain unclaimed intangible property, consisting of moneys and other intangible property ("excess receipts"), held by securities brokerage houses incorporated in Delaware.

2. On December 12, 1988, Thomas Jackson, Esquire, was appointed Special Master in this case.

3. On February 21, 1989, this Court granted the motion of the State of Texas to file a Complaint in Intervention.

4. As specifically and particularly set forth in the Complaint in Intervention filed by the State of Texas on or about January 6, 1989, the theory of which the State of Idaho endorses and espouses in full, the State of Idaho claims a portion of the excess receipts which constitute the unclaimed property that is the subject matter of this controversy. Idaho claims a portion of these excess receipts for the reason that they constitute a debt owed by the issuing entity (the "Issuer") to the securities beneficial owner. If the identity of the beneficial owner remains unknown, the excess receipts should be remitted to the state of incorporation of the Issuer under that state's unclaimed property law. Idaho accordingly claims those excess receipts held or formerly held by Delaware brokerage firms generated by Issuers incorporated in the state of Idaho.

5. As specifically and more particularly set forth in the proposed Complaint filed in Intervention by the state of Texas on or about January 6, 1989, the amount of excess receipts in issue in this litigation that Idaho is entitled to claim is presently unknown, but is very substantial.

6. The decision of the Court in this action will conclusively determine the right of Idaho to claim and take possession of these excess receipts. If the argument of either Delaware or New York is accepted, Idaho will be forever precluded from taking possession of unclaimed property of this nature.

7. Because Delaware and New York each assert conflicting claims to the subject excess receipts, Idaho's interest is not adequately represented by existing parties.

8. Based on the foregoing, Applicant is entitled to intervene as a matter of right pursuant to Rule 24(a)(2), Federal Rules of Civil Procedure.

II.

9. Alternatively, Idaho urges the Court to exercise its discretion and grant the requested intervention pursuant to Rule 24(b), Federal Rules of Civil Procedure.

10. As specifically and more particularly set forth in Texas' proposed Complaint in Intervention filed on or about January 6, 1989, Idaho also requests the Court to consider and determine its claim to certain additional excess receipts, consisting of excess receipts held by the Depository Trust Company and excess receipts which have arisen in connection with distributions made by municipal and other governmental issuers ("additional excess receipts"). Idaho urges the Court to consider such additional excess receipts in connection with the lawsuit for the reason that they come into existence and acquire their character in the exact same manner as the excess receipts under consideration. Additionally, Idaho claims a portion of the additional excess receipts for the same

reason and on the same basis that it claims a portion of the excess receipts already at issue. Clearly, a determination of Idaho's right to claim and take possession of these additional excess receipts involves questions of law and fact presently before this Court.

11. As specifically and more particularly set forth in the proposed Complaint in Intervention filed by the State of Texas on or about January 6, 1989, Idaho cannot even estimate the amount of additional excess receipts subject to its claim. However, this amount is like to be substantial.

12. The Intervention of the State of Idaho in this action will not unduly delay these proceedings or prejudice the adjudication of the rights of the original parties.

13. The State of Idaho merely seeks to intervene in this action in order to preserve its rights should this Court rule favorably on the theory espoused by Texas.

III.

14. This Court, in *Western Union Telegraph Company v. Pennsylvania,* 368 U.S. 71 (1961), recognized the difficulties inherent in resolving respective rights to claim and take possession of unclaimed intangible personal property, and concluded that the United States Supreme Court was the appropriate forum in which "all the states that want to do so can present their claims for consideration and final, authoritative determination." *Id.* at 79. See, also, *Pennsylvania v. New York,* 407 U.S. 206 (1972). Based upon such an opportunity to present its claims, the State of Idaho urges this Court to grant it Motion for

Leave to File Complaint in Intervention as a Party Plaintiff herein.

Wherefore, the State of Idaho prays that it be permitted to intervene as a party plaintiff in this case in order to protect its rights should this Court rule favorably on the theory espoused by the State of Texas.

Respectfully submitted,

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DATE April 18, 1989

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STATE OF DELAWARE, *Plaintiff*

STATE OF TEXAS, *Plaintiff in Intervention*

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v.

STATE OF NEW YORK, *Defendant*

—o—

COMPLAINT IN INTERVENTION

The State of Idaho, Plaintiff in Intervention, by Jim Jones, its Attorney General, with leave of the Court first had, files this Complaint in Intervention in the above styled and numbered cause, and complains and alleges as follows:

I.

JURISDICTION

1. The original jurisdiction of this Court is invoked under Article III, Section 2 of the Constitution of the United States and Section 1251 of Title 28 of the United States Code.

II.

PENDING ACTION

2. On or about May 31, 1988, this Court granted the motion of Plaintiff State of Delaware ("Delaware") for leave to file a complaint invoking the original jurisdiction

of the Court to resolve a controversy between Delaware and Defendant State of New York ("New York") as to which state is entitled to claim and take possession of certain unclaimed moneys and other intangible property ("excess receipts"), held by securities brokerage firms incorporated in Delaware.

3. On December 12, 1988, Thomas Jackson, Esquire, was appointed Special Master to hear this case.

4. On February 21, 1989, this Court granted the State of Texas' Motion For Leave To File Complaint In Intervention.

III.

INTEREST AND CLAIM OF PLAINTIFF IN INTERVENTION

5. Plaintiff in Intervention, the State of Idaho, acts by and through the Attorney General of Idaho, the official of the State of Idaho charged with the duty under the Constitution and the laws of the State of prosecuting unclaimed property suits at the request of the State Tax Commission of the State of Idaho and of representing the State of Idaho in litigation generally.

6. This litigation involves a dispute as to which state is entitled to the custodial taking of certain unclaimed, intangible personal property ("excess receipts"), which comes into being and acquires its character as unclaimed property in the context of securities transactions. The excess receipts consist of unclaimed payments of dividends, profits, principal, interest, and securities representing any of the foregoing ("Distributions"), held or formerly held by brokerage firms incorporated in the State of Delaware. The excess receipts are Distributions received by these

brokerage firms for the benefit of their customers which exceed the amounts to which the brokerage firms are entitled. The excess receipts are usually maintained in a "Suspense Account" until expiration of the applicable dormancy period, after which time, under current practice, they are remitted to New York.

7. The State of Idaho claims a portion of the excess receipts. Additionally, Idaho also requests that this Court consider and determine rights to certain additional excess receipts ("additional excess receipts") which have become an issue of this litigation by virtue of this Court's granting of Texas' Motion For Leave to File Complaint In Intervention.

8. Idaho is entitled to a portion of the excess receipts and additional excess receipts at issue in this litigation because they constitute a debt of the entity ("Issuer") initially issuing the shares of stock, bonds, debentures or other securities instruments owed to the entity or individual ("Beneficial Owner") who has the economic rights to the security, including the entitlement to Distributions.

9. If the identity and location of the Beneficial Owner is unknown, the state of incorporation of the Issuer should be entitled to collect the excess receipts and additional excess receipts under that state's unclaimed property law. Under existing law and practice, a debt of identical character is remitted to the Issuer's state of incorporation when held by the Issuer's Paying Agent so it should be similarly remitted to the state of incorporation of the Issuer when held by other agents in the securities holding, transfer, and distribution system ("Distribution System"). Distribution generated by Issuers incorporated

in the State of Idaho and those generated by Idaho municipalities which are unclaimed and whose Beneficial Owner is unknown, should be returned to the State of Idaho. The claim of the state of Idaho is based upon the practical reality of the manner in which securities are traded and Distributions are paid, and relies upon a strict interpretation of this Court's holding in *Texas v. New Jersey*, 379 U.S. 674 (1965).

10. By this action, Idaho seeks a judgment that New York pay to Idaho all excess receipts and additional excess receipts attributable to Issuers incorporated in the State of Idaho and those that are attributable to Idaho municipalities. Idaho further seeks a declaration that Idaho has the right in the future to claim and take possession of excess receipts and additional excess receipts without interference from any other state. The State of Idaho additionally seeks an order from this Court enjoining and restraining New York from demanding or collecting such excess receipts and additional excess receipts, and from expending any such sums collected, but presently unspent, which are attributable to Issuers incorporated in the State of Idaho and to Idaho municipalities, until such time as this controversy is resolved.

11. Idaho asserts its claim pursuant to Chapter 5 of Title 14, Idaho Code, § 14-501, *et seq.* (1988 Cum. Sup.), ("Idaho Code") which provides, in essence, for the custodial taking of abandoned or unclaimed tangible or intangible personal property when the existence and location of the owner of the property is unknown to the holder of the property, and no claim to said property has been

asserted within the applicable dormancy period, which for most types of personal property is seven years.[1]

WHEREFORE, the State of Idaho as Plaintiff in Intervention prays:

1. That the State of Idaho be allowed to intervene herein;

2. That additional excess receipts held by the Depository Trust Company and demanded by or remitted to New York for the period 1978 through 1985 be included as part of the unclaimed property in controversy in this lawsuit;

3. That additional excess receipts attributable to Governmental Issuers held by the Depository Trust Company and all DTC Participants for the period 1978 through 1985 be included as part of the unclaimed property in controversy in this lawsuit;

4. That the temporary injunction sought by Delaware with respect to the excess receipts already at issue herein be extended, for the reasons stated in the Complaint of Delaware, to restrain New York from demanding or taking possession of all excess receipts attributable to Issuers incorporated in the State of Idaho or to Idaho Governmental Issuers;

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[1]Since 1961, the State of Idaho has provided by statute that the State shall take custodial possession of unclaimed or abandoned property of unknown owners. Chapter 5 of Title 14 of the Idaho Code repealed and replaced former §§ 14-501-14-541, as added by 1980 Idaho Session Laws, ch. 281, § 1, which had repealed and had replaced former Idaho Code § 14-504-14-531, as added by 1961 Idaho Session Laws, ch. 162, § 1. These provisions reflect, with some modification, the 1981 Uniform Unclaimed Property Act.

5. That Defendant New York be restrained and enjoined from collecting any excess receipts and additional excess receipts attributable to Issuers Incorporated in the State of Idaho or attributable to Idaho Governmental Issuers, and from expending any sums collected but presently unspent, consisting of such excess receipts and additional excess receipts until such time as this controversy is resolved;

6. That judgment be entered that the excess receipts and additional excess receipts held by DTC and DTC Participants attributable to Issuers incorporated in the State of Idaho or to Idaho Governmental Issuers is subject only to the claims of the State of Idaho under the Idaho Code;

7. That New York be directed to pay or deliver to Plaintiff in Intervention all of the excess receipts and additional excess receipts paid or delivered to New York attributable to Issuers incorporated in the State of Idaho and Idaho Governmental Issuers which have been abandoned for the applicable dormancy period under the Idaho code;

8. That Plaintiff in Intervention be granted such other and further relief as this Court deems just.

Respectfully submitted,

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